question as to what actually occurred after the 8th July depends upon the oral evidence called by the defence, that is to say, the evidence of the wife, and of an employee of the restaurant. This evidence in my view establishes that throughout July and indeed after that date, the wife was on these premises morning, noon and night, looking after the business, the management of which she had already taken over sometime previously when her husband lost interest in the business and told her he wanted to go elsewhere. Furthermore, she paid the rent of the premises for the month of July out of her own bank account; and as she said in evidence, "I took over the premises in July". In addition, her husband, through his solicitors, informed the plaintiffs in the middle of July that he had assigned the premises to her. All this, in my view, clearly establishes a *prima facie* case that the wife, and not the husband, was in *de facto* possession during July. How then do the plaintiffs seek to rebut this *prima facie* case? Since they called no oral evidence they are constrained to rely upon such admissions as they were able to obtain from the defendant's evidence. This evidence establishes that in accordance with the terms of the deed, the husband remained the owner of the goodwill, chattels and stock-in-trade of the restaurant business until the 31st July but it is clear that the reason for this arrangement was not to enable the husband to exercise any control or dominion over the premises as such, but was merely for convenience of accounting. The evidence shows also that he visited the premises occasionally during July but again it is clear that the reason for the visits was not for the purpose of exercising any control or dominion over the premises as such, but mainly, it would seem, for the purpose of taking money from the till. And furthermore the letter written by his solicitors on the 17th July informing the plaintiffs that he had assigned the tenancy to his wife is quite inconsistent with even an *animus possidendi*, let alone the actual control or apparent dominion over these premises at that time.

In my judgment, the plaintiffs have failed to rebut the *prima facie* case of the defendant and therefore the defendant has established that the deed of assignment was accompanied by actual possession from the date on which it was made. Accordingly the deed is admissible in evidence and defeats the plaintiffs' claim for a declaration that the defendant has no right or interest in these premises. For these reasons I am of the opinion that the judgment of the Court below was right and should be affirmed. The appeal is accordingly dismissed with costs.

Chua J.: — I have had the benefit of reading the judgment of the learned President with which I agree and have nothing to add.

Ambrose J.: — I have had the advantage of reading the judgment of the learned President and I agree with it.

Appeal dismissed.

Solicitors: *Braddell Bros.*; *Allen & Gledhill.*

CHERIAN VARUGHESE v. AMINAH RADIN OSMAN

[A.C.J. (Wee Chong Jin J.) October 18, 1957]

[Singapore — District Court Appeal No. 11 of 1957]

Landlord and Tenant — Notice of demand in writing — Meaning of "reasonableness" — Evidence of — Control of Rent Ordinance (Cap. 242), s.15(1)(a).

The very words of section 15(1)(a) of the Control of Rent Ordinance which requires a "notice of demand in writing" makes it abundantly clear that it was not the intention of the legislature that the word "demand" should be construed to mean a formal demand made in accordance with the strict rules of common law but that the word "demand" should be construed in its popular sense.

The question of what is reasonable is eminently a question of fact for the trial Judge and in an appeal on the question of reasonableness, unless the appellant can show that the trial Judge has misdirected himself, where evidence of reasonableness has been led, by omitting some points of substance or by taking into account something which should not be taken account of, an appellate Court will not disturb the trial Judge's decision. Where the only evidence of reasonableness is irregularity in payment of rent it is material for the trial Judge to consider all the circumstances relating thereto and if he fails to direct his mind to such circumstances, if any exists, he has misdirected himself.

In this case the trial Judge based his finding on the question of reasonableness purely on the fact of irregularity in payment of rent and failed to direct his mind to the facts that led to such irregularity. New trial ordered.

[**Editorial Note:** As to purpose of "demand" see the observations of Murray-Aynsley C.J. in *Leong Man Pan & Anor. v. President, Thong Sow Hong*, (1952) M.L.J. 222 which was followed in *Yee Ah Cheng v. Ko Kam Sai*, Singapore — Dist. Ct. App. No. 16 of 1957 — unreported.]

DISTRICT COURT APPEAL.

Lee Kuan Yew for the appellant.

Charlie Foo for the respondent.

Cur. Adv. Vult.

Wee Chong Jin J.: — This is an appeal from the judgment of the learned District Judge in favour of the respondent/plaintiff in an action for recovery of possession of premises known as No. 47 Still Road, Singapore.

There is no dispute that No. 47 Still Road are controlled premises and the claim for possession is based on section 15(1)(a) of the Control of Rent Ordinance (Cap.242) which provides as follows:—

"15. — (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

(a) where at the date of the notice determining the tenancy given by the landlord rent lawfully due was in arrear for twenty-one days or upwards after notice of demand in writing has been served on the tenant and there was no tender thereof at or before such date and the Court considers it reasonable that such order or judgment be made or given";

There is also no dispute that the rent was $70 per month which includes the use of electricity and water and that such rent was payable in advance on the first day of every calendar month.

At the trial the only oral evidence was that of the respondent/plaintiff. An agreed bundle of correspondence was also put in evidence which contains correspondence passing between the respondent's solicitors and the appellant and correspondence passing between the respondent's solicitors and the appellant's solicitors.

In support of his claim, the respondent relied on the demand contained in his solicitor's letter to the appellant dated 5th October 1956 which is in the following terms:—

"We enclose herewith six rent receipts issued by our client for the various amounts sent to us by you being rents of the above premises, up to May 1956.

The last amount sent to us was the sum of $156. Could you please (sic) how much money have you deducted from the said rents in respect of light and water and for what rents have you paid?

It appears that you have only paid rents up to May, 1956. Please let us have a detailed account.

We are instructed to demand from you, which we hereby do, all rents due up-to-date. Unless we hear from you by return our instructions are to proceed against you without further notice."

At the trial after the close of the respondent's case, counsel for the appellant elected not to call evidence and made a submission that there was no case for the appellant to answer. Counsel based his submission on two points. He submitted firstly that the letter of the 5th October 1956 was not a valid notice of demand in writing within the meaning of section 15(1)(a) and secondly that in any event on the evidence it was not reasonable for the Court to make an order for possession.

The appellant in this appeal relies on these two submissions. It is contended that for there to be a valid notice of demand in writing within the meaning of section 15(1)(a) it is essential that the demand must be for the precise sum then payable and not one cent more or less. As the letter of the 5th October 1956 merely demands "all rents due up-to-date" it is submitted that such a demand does not comply with section 15(1)(a). In support of this contention counsel for the appellant cited a passage in *Woodfall* on Landlord and Tenant (25th Edition) at page 996 where the learned author states:

"The demand must be made of the precise sum then payable and not one penny more or less. If the rent be payable quarterly, and more than one quarter is due, only the last quarter's rent should be demanded and not the previous arrears, otherwise the demand will be altogether bad."

I am unable to agree with this contention. The passage cited relates to the common law principle that unless there are express words in a lease or agreement dispensing with a formal demand of the rent, or the case falls within section 210 of the Common Law Procedure Act 1852, no entry or ejectment can be maintained for non-payment of rent without a previous formal demand thereof made according to the strict rules of the common law. It must be remembered that the formal demand required by the common law only arises in cases where the lease or tenancy has not been duly determined and before such due determination the landlord seeks to obtain possession by a writ of ejectment based on non-payment of rent. In this case it is not in dispute that the tenancy has been duly determined according to law. The point before me is what is the true meaning of the word "demand" in section 15(1)(a) and in my opinion the very words of section 15(1)(a) which require a "notice of demand *in writing*" make it abundantly clear that it was not the intention of the legislature that the word "demand" is to be

construed to mean a formal demand made in accordance with the strict rules of the common law but that the word "demand" should be construed in its popular sense. I am accordingly of the opinion that the letter of the 5th October 1956 was a sufficient notice of demand in writing as required by section 15(1)(a) of the Ordinance.

I will now deal with the second submission that on the evidence it was not reasonable for the learned trial Judge to make an order for possession against the appellant. In the first place the question of what is reasonable is eminently a question of fact for the trial Judge and in an appeal to this Court on the question of reasonableness, unless the appellant can show that the trial Judge has misdirected himself, where evidence of reasonableness has been led, by omitting some point of substance or by taking into account something which should not be taken account of, an appellate Court will not disturb the trial Judge's decision. Here, however, the only evidence of reasonableness led was irregularity in payment of rent.

In my opinion where the only evidence of reasonableness is irregularity in the payment of rent it is material for the trial Judge to consider all the circumstances relating thereto and if he fails to direct his mind to such circumstances, if any exists, he has misdirected himself.

In this case the learned trial Judge said: "The correspondence in Exhibit A disclosed that defendant had been most irregular in the payment of rent for some considerable time." I am satisfied that he based his finding on the question of reasonableness purely on the fact of irregularity in the payment of rent and that he had failed to direct his mind to the facts (as disclosed in the correspondence) that led to such irregularity. I am also satisfied that if the learned trial Judge had properly directed himself he might have come to a different conclusion and in the result the appeal must be allowed.

I direct a new trial. The costs of this appeal and of the Court below will be paid by the respondent on the same scale as that allowed by the Court below.

New trial ordered.

Solicitors: *Lee & Lee; L. Rayner.*

PUBLIC PROSECUTOR v. ISMAIL BIN LOYOK

[A. Cr. J. (Smith J.) March 26, 1958]

[Seremban — Criminal Appeal No. 1 of 1958]

Penal Code, s.409 — Criminal breach of trust — Sentence — Inadequacy — Consideration of public interest.

In this case the accused was convicted of the offence of criminal breach of trust as a public servant, an offence under section 409 of the Penal Code and was bound over under section 294(i) of the Criminal Procedure Code (Cap.6).

Held: the sentence was inadequate and must be altered to one of six months' imprisonment.

The first and foremost consideration of punishment is the public interest. The object of punishing crime is not only to punish the offender but also to deter others. Although it is desirable that the first offender should if possible be kept from coming into contact with hardened criminals, nevertheless other public servants submitted to temptation will not be deterred from succumbing to temptation if they see that the only punishment which it involves is some form of binding-over.

Case referred to:—

(1) *R. v. Ball,* 35 Cr. App. R. 164.

MAGISTRATE'S APPEAL.

L. A. Massie (Federal Counsel) for the appellant.

K. C. Hoh for the respondent.

Smith J.: — This was an appeal by the Public Prosecutor against the inadequacy of sentence.

The accused was convicted of the offence of criminal breach of trust as a public servant, an offence under section 409 of the Penal Code. The accused was a clerk in the Seremban office of the Telecoms. Department of the Federal Government since 1946. As acting supervisor it was his duty to receive monies from the public over the counter in respect of telephone accounts and to issue receipts therefor in accordance with the General Orders governing it. It was also his duty to pay all monies received into the Telecoms. account at the Chartered Bank, Seremban. A surprise check held on 13th August, 1957, revealed that the accused was $958.69 short. The accused's basic salary was $394 per mensem.

The accused was convicted by the learned President and against that conviction he has not appealed.

The learned President dealt with the accused under section 294(i) of the Criminal Procedure Code and directed that he be released on his entering into a bond in the sum of $300 with 2